

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

22

ORDERS OF THE BENCH

Date of Order: 19.04.2012

OA No. 320/2009

Mr. Virendra Lodha, Sr. Counsel, assisted by
Mr. P.N. Jatti, counsel for applicant.
Mr. M.D. Agarwal, counsel for respondents.

Heard learned counsel for the parties. O.A. is disposed
of by a separate order on the separate sheets for the
reasons recorded therein.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K.S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 19th day of April, 2012

ORIGINAL APPLICATION No. 320/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Bal Krishan Sharma aged about 51 years, son of Late Shri Babu Lal Sharma, resident of 7/127, Vidhyadhar Nagar, Jaipur. AT present holding the post of Store Keeper, C/o Director, national Institute of Ayurved, Jaipur.

... Applicant

(By Advocate : Mr. Virendra Lodha with Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary, Indian System of Medicine, 'AYUSH' Red Cross Bhawan, Red Cross Road, New Delhi.
2. National Institute of Ayurved through its Director, Madhav Vilas Palace, Amber Road, Jaipur.

... Respondents

(By Advocate : Mr. M.D. Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) by an appropriate order or direction the impugned action of the respondents in not considering the candidature of the applicant in the matter of promotion from the post of store keeper to the post of store officer specially when applicant became eligible for consideration for promotion on the post of store officer on 19.09.1990, be declared as null and void.
- (ii) by further appropriate order or direction respondents be directed to convene DPC in the matter of promotion to the post of Store officer against the vacancy of the year 1990. On the basis of unamended rules, the Rules of 1982

remained in force upto 1996, as the vacancy pertains in the year 1990, as such, by considering candidature of the applicant on the post of Store Officer and accord him all consequential benefits with interest.

- (iii) by further appropriate order or direction respondents be restrained from taking into consideration the Amended Rules of 1996 since they came into force only on 28.09.1996, admittedly in the instant case vacancy of Store Officer pertains to the year 1990, the scheme of Rules of 1982, as such for all practical purposes vacancy of 1990 shall be filled in only on the basis of rules of 1982 and not on the basis of amended rules of 1996 accordingly by an appropriate direction considering the candidature of the applicant in the matter of promotion from the post of Store Keeper to the post of Store Officer order in this regard be directed to be passed.
- (iv) by further appropriate order or direction the Hon'ble Tribunal may kindly call for the entire record and after examining the same be pleased to declare the impugned amendment in the rules of 1982 now called as Amended Rules of 1996 which has come into force w.e.f. 28.09.1996 so far as it relates to the post of Store Officer whereby the promotional avenue has been changed from the post of Store Keeper to the post of Store Officer wherein a new channel has been added by inserting of OS/PA to Director, failing which from Store Keeper/UDC with a further experience clause in the promotion clause be declared null and void and be quashed and set aside.
- (v) by further appropriate order or direction the amended Rules of 1996 in so far as it relates to abolition of the post of Store Keeper too be also declared null and void and be quashed and set aside.
- (vi) by further appropriate order or direction the respondents be directed to consider the case of applicant for promotion to the post of Store Officer as per the Rules of 1982 from the date when he became eligible i.e. immediately on completion of 5 years experience on the aforesaid and as such a DPC be convened against the vacancies of 1990 and consider the case of applicant for promotion to the post of Store Officer w.e.f. 1990 and to promote him

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on the aforesaid post with all consequential benefits thereto.

- (vii) by further appropriate order or direction the respondents be directed to immediately take the applicant in the pay scale of Rs.425-700 in pursuance to the Rules of 1982 which had clearly come into existence much prior to the advertisement dated 30.11.1982 (Annexure A/3) and thus give the scale of Rs.425-700 to the applicant right from the date of initial appointment and thereupon release annual grade increments and give him fixation accordingly and make payment of arrears of salary with all other emoluments attached to the aforesaid post with interest @ 18% per annum with all consequential benefits thereto.
- (viii) by further appropriate order or direction the respondents be directed to consider the case of applicant for promotion to the post of Store Officer against the vacancies of 1990 as per the Rules of 1982 which was prevalent at the period of time as he had put in 5 years experience on the post of Store Keeper and thereupon convene the DPC and promote the applicant on the post of Store Officer w.e.f. 1990 with all consequential benefits thereto.
- (ix) by further appropriate order or direction the respondents be directed to assign appropriate seniority to the appellant on the post of Store Officer by treating him promotee of 1990 with all consequential benefits thereto.
- (x) by further appropriate order or direction the respondents be restrained from filling up the post of Store Officer in pursuance to the Amended Rules of 1996 which came into force w.e.f. 28.09.1996 and in case if any order is passed for filling up the post of Store Keeper in pursuance to the Amended Rules, 1990 the same may kindly be taken on record and be quashed and set aside.
- (xi) by further appropriate order or direction the respondents be restrained from taking any corrosive step against the applicant for filling this OA challenging the validity of Rules of 1996 and if any other prejudicial the rights of the applicant is passed, the same may kindly be taken on record and may be quashed and set aside.

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(xii) Any other order or direction which may be considered just and proper in the facts and circumstances of the case be passed in favour of the applicant.

(xiii) Cost of the Original Application be awarded in favour of the humble applicant.

2. Brief facts of the case, as stated by the applicant, are that he was initially appointed as Store Keeper after undergoing regular mode of selection/recruitment vide order dated 11.09.1985 (Annexure A/2). That in pursuance of the aforesaid order, the applicant joined as Store Keeper in the office of respondent on 19.09.1985. The applicant was confirmed on the post of Store Keeper w.e.f. 19.09.1987 vide office order dated 31.03.1989 (Annexure A/3).

3. The next channel of promotion from the post of Store Keeper is to the post of Store Officer as per National Institute of Ayurved Service Rules, 1982 (Service Rules, 1982) as per Schedule-I appended to the aforesaid Rules. The applicant has further stated that one post of Store Officer which was sanctioned in the National Institute of Ayurved was available and vacant since inception i.e. 1985 and the aforesaid post of Store Officer continued to remain vacant till date as would be evident from the statement of sanctioned post, position as on 31.03.1998 (Schedule-A). The post of Store Officer is to be filled in by promotion failing which by direct recruitment. In case of promotion,

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this post is to be filled by a person having five years experience on the post of Store Keeper. The applicant was appointed as Store Kedeper vide order dated 11.09.1985 and he joined the service on 19.09.1985. Thus he completed five years experience on the post of Store Keeper on 18.09.1990. Thus the applicant became eligible for promotion on the post of Store Officer w.e.f. 18.09.1990 or latest by 19.09.1990. It is a settled law that the applicant had a right to be considered for promotion provided that he fulfills and possess the requisite eligibility and suitability for the post. However, the respondents did not convene the meeting of the DPC to consider the candidature of the applicant for the purpose. Therefore, this action of the respondents is against the provisions of the Constitution. The applicant was at sr. no. 1 of the seniority list of the Store Keeper.

4. Subsequently, amendment has been made in the Service Rules 1982 on 28.09.1996 whereby the post of Store Keeper has totally been abolished and for the post of Store Officer, the entire channel of promotion has been changed. Now in the promotion channel, OS/ PA to Director have been added failing which promotion is to be made from Store Keeper/UDC. The applicant has stated that his case to the post of Store Officer should have been considered according to the Service Rules, 1982 because

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the vacancy of Store Officer existed in 1990 i.e. prior to the commencement of the Amended Rules of 1996.

5. The applicant has further stated that Service Rules of 1982 provided that the post of Store Keeper shall carry the pay scale of Rs.425-700/-. Therefore by issuing the advertisement in the pay scale of Rs.330-550 and further by giving appointment to the applicant on the said post is clear breach to the provisions of Service Rules of 1982. Therefore the applicant should be allowed the pay scale of Rs.425-700/- which is according to the Service Rules of 1982.

6. The respondents have filed their reply. The respondents have stated that the applicant was considered for promotion on the post of Office Assistant as per Service Rules of 1996 which came into force on 28.09.1996 but the applicant could not be promoted as there were seven candidates for the post of Office Assistant who were senior and were more meritorious than the applicant. However, the applicant was given ACP vide order dated 28.09.2001 and having accepted the same without any objection whatsoever under the Rules of 1996, the applicant has continuously taken the benefit of the same (Annexure R/2). That in the year 2009, a DPC was held for the promotion and the applicant was promoted on the post of Office Assistant vide order dated 10.12.2009 and the

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applicant has accepted the said order without any objection, hence, he is estopped to challenge the said Amended Rules of 1996. The copy of the Promotion Order dated 10.12.2009 and Joining Report dated 10.12.2009 of the applicant are marked as Annexure R/3 and R/4 respectively. Since the applicant has taken the benefit of Amended Rules, 1996, this OA has become infructuous.

7. The respondents in their reply have admitted that the provisions of Service Rules 1982 were amended in the year 1996 but they have denied that the post of Store Officer remained vacant or it was never filled.

8. They have further stated that the appointment of the applicant was made in pursuance of the advertisement dated 30.11.1982 which was issued by the Institute in which it was clearly mentioned that the pay scale of the Store Keeper will be Rs.330-560. The advertisement was issued on the basis of the sanction of the post given by the competent authority and the decision taken, from time to time, by the Financial Committee as well as the Governing Body of the respondents. They have further stated that earlier there was one post of Store Keeper in the pay scale of Rs.330-560 and accordingly, budget was sanctioned by the Financial Committee in its meeting held on 28.05.1977. The minutes of the Financial Committee have been annexed as Annexure R/5. These minutes have been

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approved by the Governing body in its meeting held on 22.10.77 (Annexure R/6). The applicant was appointed and working in the pay scale of Rs.1200-2040 and, therefore, he could not be promoted to the post of Store Officer, which is a Group 'B' post with only five years experience. The post of Store Officer was abolished w.e.f. 26.06.1995. The applicant was not eligible for promotion on the post of Store Officer as he was in the pay scale of Rs.330-560 and the persons working in the pay scale of Rs.425-700 can only be considered for promotion to the post of Store Officer. They have further stated that in the Service Rules of 1982, the Store Keeper/UDC have also an opportunity for promotion to the post of Assistant and then to Office Superintendent and then to Group 'A' post i.e. 'Administrative Officer'. The action of the respondents is perfectly legal and does not violate the provisions of 14 & 16 of the Constitution of India or any other provisions of law. Therefore, the present OA has no merit and it should be dismissed with costs.

9. The applicant has also filed the rejoinder.

10. Heard the learned counsel for the parties and perused the relevant documents on record. Learned counsel for the applicant submits that the applicant came to be initially appointed as Store Keeper through regular mode of selection/recruitment in the year 1985 and joined

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in pursuance thereof on 19.09.1985. The applicant thereafter was confirmed on the post of Store Keeper w.e.f. 19.09.1987. The next channel of promotion, as per the Service Rules 1982, is on the post of Store Officer from the post of Store Keeper having five years experience. The applicant had completed five years service as Store Keeper in the year 1990. As such, the applicant was entitled to get the promotion on the post of Store Officer as per the Rules of 1982, when one post of Store Officer was available in the Respondent Institute which is also evident from the Schedule-A of the OA. That as per the Scheme of Rules, the post of Store Officer is to be filled in by promotion failing which by direct recruitment. It is a settled proposition of law in service jurisprudence that the employee has the fundamental right to be given due consideration for promotion as per rules, but the case of the applicant was not considered as per the existing rules and no reason whatsoever were assigned in denial of giving due consideration for further promotion. The suitability is to be adjudged on the basis of prevailing rules and considering that vacancy existed. That subsequent operation of new rules has no relevance in respect of the vacancies for the preceding year. Once the applicant had completed five years service on the post of Store Keeper in the year 1990 then the vacancies of the Store Officer must have been filled up as per the pre-amended Rules.

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11. Learned counsel for the applicant further argued that from bare perusal of the reply to OA, it is evident that no substantial reply has been given rather no substantial reply is available with the respondents that how the employee would not be considered for further promotion on the basis of the pre-amended rules when vacancies pertain to the year preceding amended rules came into existence. The applicant as such is entitled to be given relief as per the relief sought in the OA. In support of his arguments, learned counsel for the applicant referred to the following case laws:-

- (i) R. Dayal & Others vs. State of Rajasthan & Others
Rajasthan Law Weekly 1997 (1) Raj. 1
- (ii) State of Rajasthan vs. R. Dayal & Others
1997 (10) SCC 419

12. Learned counsel for the applicant further argued in the Service Rules of 1982, the post of Store Keeper carries the pay scale of Rs.425-700/-. Therefore, the respondents should have advertised this post in the pay scale of Rs.425-700 and the applicant should have been given the pay scale of Rs.425-700/-. He further argued that applicant may be given the pay scale of Rs.425-700/- from the date of his initial appointment as provided under the Service Rules of 1982. He cannot be given lower scale than what has been provided in the Service Rules for that post. Therefore he argued that the OA may be allowed.

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13. On the other hand, learned counsel for the respondents argued that an advertisement was issued to fill up the post of Store Keeper in the pay scale of Rs.330-560. The applicant was selected on that post and he was getting the pay scale of Rs.330-560. This is as per the decision of the Finance Committee and duly approved by the Governing Body. The applicant has accepted his promotion to the post of Assistant without any objection. Since the applicant was working on the post of Store Keeper in the pay scale of Rs.330-560, he could not have been considered for promotion to the post of Store Officer, which is a Group 'B' post. Even according to the Service Rules of 1982, the Store Keeper working in the scale of Rs.425-700 only can be considered for promotion to the post of Store Officer (Scale Rs.650-1200/-). The applicant had another channel of promotion i.e. to the post of Assistant and he was promoted to that post in the year 2009. He accepted that promotion without any objection and therefore, now he cannot claim promotion on the post of Store Officer. The present OA has no merit and it should be dismissed with costs.

14. Having heard the learned counsel for the parties and after careful perusal of the documents on record, it is clear that the applicant was appointed on the post of Store Keeper by the respondents in the year 1985. On that date, Service Rules 1982 were in force. According to the

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respondents, the post of Store Keeper was advertised on 30.11.1982 in the Rajasthan Patrika and this advertisement was issued on the basis of the recommendations of the Finance Committee meeting held on 28.05.1977. The minutes of which were duly approved by the Governing Body in its meeting held on 22.10.1977. Perusal of Service Rules of 1982 makes it clear that these Rules came into force on 01.08.1982. Therefore, in our considered view any advertisement issued after 01.08.1982 when the Service Rules came into force would have been issued according to the provisions of the Service Rules, 1982 rather than on the basis of the recommendations of the Finance Committee dated 28.05.1977. The advertisement should have mentioned the pay scale of Rs.425-700/- which is prescribed under the Rules. It is a settled preposition of law that Service Rules will take precedence over any decision of the Finance Committee or the Governing Body especially when Service Rules came into force on a later date. Under the Service Rules of 1982, there is no post of Store Keeper in the scale of Rs.330-560. Therefore, in our opinion, the applicant is entitled to the pay scale of Rs.425-700/- from the date of his initial joining on the post of Store Keeper. The respondents are directed to grant this scale to the applicant expeditiously but in any case not later than three months from the date of receipt of the copy of this order.

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15. Learned counsel for the respondents argued that the post of Store Officer was not vacant since 1990. They have denied this fact in their written statement as well. However, from the perusal of the letter dated 20.06.2001/02.07.2001, which was given by the learned counsel for the respondents during the course of arguments, it is clear that the post of Store Officer was vacant as on 26.06.1994 and this post has been abolished on 26.06.1995 because it was lying vacant for more than a year. This makes it clear that the post of Store Officer was lying vacant prior to the introduction of the Amended Rules of 1996. Since the applicant was working on the post of Store Keeper, therefore, according to the provisions of Service Rules of 1982, he was entitled for consideration for promotion to the post of Store Officer from the date on which he became eligible to be considered to the post of Store Officer. We are of the opinion that the ratio decided by the Hon'ble High Court in the case of **R. Dayal & Others vs. State of Rajasthan & Others (Supra)** and the ratio decided by the Hon'ble Supreme Court in the case of **State of Rajasthan & Others vs. R. Dayal & Others** is squarely applicable to the facts & circumstances of the present case. Hon'ble Supreme Court has held that the post which falls vacant prior to the amendment of the Rules would be governed by the original rules and not by the amended rules. Since the post of Store Officer was available prior to the amendment of the Service Rules in

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1996, the post of Store Officer should be filled according to the Service Rules of 1982. Therefore, we direct the respondents to convene a DPC and consider the case of the applicant for promotion to the post of Store Officer from the date he became eligible for promotion on that post and from the date the post was vacant after applicant became eligible for the post of Store Officer after 19.09.1990 within a period of three months from the date of receipt of a copy of this order. The applicant will be entitled for all consequential benefits, if any.

16. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)
AHQ

K. S. Rathore
(Justice K.S.Rathore)
Member (J)